

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal 3rd Misc. Suspension Of Sentence Application
(Appeal) No. 136/2026

In

S.B. Criminal Appeal No.1352/2022
CNR: RJHC021106402025 | URN: SOSA / 303U / 2026

Rahul S/o Mahaveer, R/o Near Holi Gatta, Harsaura, Police
Station Harsaura, District Bhiwadi (Presently Confined In Central
Jail Alwar)

-----Petitioner

Versus

1.

State Of Rajasthan, Through P.p.
2.

Xxxx, R/o
3.

Shri Gabruddin S/o Shankar Khan, Aged About 45 Years,
R/o Harsora, Bansor, Distt. Bhiwadi, Rajasthan.

-----Respondents

For Petitioner(s)

:

Mr. Rajeev Surana, Senior Advocate
with Ms. Muskan Verma and
Mr. Umang Jain

For Respondent(s)

:

Mr. Pankaj Kumar
Mr. Vijay Singh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

03/08/2026

1.

The third application for suspension of sentence is preferred
in pending appeal which was admitted on 16.03.2023 and
filed aggrieved from order of conviction and sentence dated
20.05.2022 in Sessions Case No.26/2020 passed by learned
Special Judge (POCSO Act Cases) No.2, Alwar whereby
appellant was convicted for offence under Sections 363, 366,

376A of IPC and 5(m)/6 of POCSO Act and sentenced accordingly.

2. Learned Senior Advocate for the appellant while relying upon grounds of appeal submitted that without observing principle of law learned trial court has arrived at a conclusion of conviction. He further submitted that learned trial court has overlooked material contradictions and discrepancies, which goes to root of the matter. He also submitted that the entire case of prosecution rests on testimony of child witness and no independent witness was examined to corroborate the story of prosecution.
3. Learned Senior Advocate for the appellant submits that the first SOS application was dismissed by this Court on 05.09.2023 and the second on 08.10.2024, and thereafter the appellant remained in custody. He submitted that the period of custody in the instant case is approximately seven years and six months against the maximum awarded sentence of 20 years. He also submitted that the trial Court has awarded a fixed term sentence and the appellant has a strong case to succeed in the appeal, but his appeal cannot be considered on merits due to one or another reason.
4. Learned Senior Advocate placed reliance upon the judgment in the case of **Nanhe Lal Verma versus State of M.P., Criminal Appeal No. 4763 of 2024, decided by the Hon'ble Supreme Court on 25.11.2024**. He also placed reliance upon the judgment in the case of **NCB versus Lakhwinder Singh, 2025 INSC 190, and Dinesh versus State of Haryana, reported as 2026 Supreme SC 719,**

and submitted that only on basis of period of incarceration, he is entitled for bail.

5. Learned Senior Advocate has further referred to the statements of the parents of the victim and submitted that they have turned hostile and have not supported the case of the prosecution. He further referred to the statements of the other witnesses and submitted that even those witnesses have not supported the case of the prosecution. He referred to the statement of the victim and submitted that she is a tutored witness and, in the case of a tutored witness, her statement cannot be relied upon by the Court to convict the appellant. He also referred to the principles of criminal law and submitted that whenever there is any discrepancy or chance of false implication, then the benefit goes to the accused and, after extending such benefit, the appellant is entitled for bail.
6. Aforesaid contentions were opposed by the learned Public Prosecutor and the learned counsel for the complainant.
7. Heard Learned Senior Advocate for the appellant, learned Public Prosecutor, and learned counsel for the complainant. Perused the material placed on record.
8. The first SOS application of the appellant was considered by this Court on 05.09.2023, wherein we have observed as under:

In the instant case which was registered on 23.11.2019 under Sections 363, 354(B) IPC and 7/8 of POCSO Act, charge-sheet was filed under Sections 363, 354B, 376AB of IPC and Sections 3, 4, 5(m), 6, 7 and 8 of POCSO

Act. A written report (Ex.P-4) was registered by father of victim and he was examined as PW-3 though declared hostile by prosecution but his deposition clearly indicated that he corroborated the allegations made on present appellant. His wife (PW-2) (mother of victim) was also examined and she also turned hostile but she corroborated the incident. Learned senior counsel for appellant referred the testimony of PW-4 (aunt of victim) and she denied the fact that she witnessed the incident. In Ex.P-4, two witnesses Shashi and Monu were named by PW-3 and they were not produced by the prosecution but they were examined as defence witnesses DW-1 and DW-2, wherein they denied the incident.

Learned senior counsel referred the statement of PW-6 (Dr.Rekha Yadav) and medical report (Ex.P-8) wherein no injuries were found on persona including genital of victim. FSL report was exhibited as Ex.P-22 and Ex.P-23 by IO (Chand Singh) wherein also nothing was found.

In case of **Kavita Chandra Kant Vs. State of Maharashtra** (supra) learned senior advocate referred the ingredients for charge under Section 366 IPC. We have considered aforesaid as we are not considering matter at final stage so opinion about Section 366 IPC can not be expressed at this stage. In another case **State (Govt. of NCT of Delhi) Vs. Sandeep Madan (supra)**, a Co-ordinate Bench of Delhi High Court, on the basis of cross-examination has observed that a perusal of cross-examination indicated that her testimony could not be said

to be absolutely free from tutoring. About evidence of child witness, this court has also considered the issue of child witnesses and tutoring thereof in case of **Barjya & Ors. Vs. State of Rajasthan [S.B. Criminal Appeal No. 194/1995]**. Again at this stage a specific opinion cannot be expressed on merits.

In case of State of **State of Uttarakhand Vs. Darshan Singh (supra)**, Hon'ble Supreme Court considered inconsistencies in the testimony of prosecution witnesses but again we are not considering the matter on the merits. Similarly in case of **Jai Prakash Vs. State of UP (supra)**, discrepancies between medical evidences and oral evidence were considered whereas in the case of **Bhugdoamal Ganga Vs. State of Gujarat (supra)** Hon'ble Supreme Court while considering the provisions of Section 60 of the Indian Evidence Act laid down that hearsay evidence is not admissible in absence of examination of informant and mere suspicion does not amount to proof.

Considering aforesaid judgments and also the material available on record, particularly in light of submissions of learned senior counsel, the main issue in the instant case is that victim was less than 5 years on date of incident and in her first statement recorded under Section 164 Cr.P.C. she clearly named present appellant and also stated that appellant had touched his penis (private part) with her mouth and further rubbed with her vagina. Though statement

was recorded on 05.12.2019, after a delay of 12 days from the incident. Victim further corroborated this statement when she was examined as PW-1 before the trial court. Learned trial court while recording the statement of PW-1 observed that she was not comfortable, therefore her statements were deferred and ultimately on next date, her statements were concluded.

At this stage, it is not possible to express any opinion on merits of the case particularly the concern and procedural lapses as pointed out by learned senior counsel for appellant. Similarly we cannot express any opinion on other grounds as raised by learned senior counsel for appellant.

Appellant is in custody since his arrest and record further indicated that he was a student pursuing his studies in college but facility of education can be availed while being in custody. He can pursue his higher studies and seek permission from concerned prison authority.

Having considered the entirety of facts and circumstance, particularly the fact that sexual penetrative (vaginal) assault was not committed with intent to cause injuries on victim, therefore, in absence of injuries in the matter the contentions cannot be accepted. In view of gravity and seriousness of offence, I am of considered opinion that this is not a fit case to enlarge appellant on bail.

9. The age of the victim is four years and, soon after the incident, Report Ex.P-4 was registered on the very same day,

there is no delay in reporting matter to police. The statement of the victim was recorded under Sections 161 and 164 Cr.P.C. Thereafter, the statement of the victim was recorded as PW-1. The victim (PW-1) was present before the Court on 07.01.2021, wherein she clearly deposed about the act of the appellant, and during recording of statement, she became uncomfortable and ultimately her statement was deferred. The statement could only be completed on 23.03.2021. The admissions in the cross-examination clearly indicate that her mother had told her about what statement to be made in the Court. We have considered the statements recorded on two occasions before the trial Court. There is no bar under the Evidence Act with regard to qualification of any witness.

10. Very recently, in the case of **State of M.P. versus Balveer Singh, 2025 INSC 261**, Hon'ble Supreme Court considered an appeal filed by the State against the judgment of acquittal, wherein accused Balveer Singh was charged with the murder of his wife, and the prosecution placed reliance upon the testimony of the seven-year-old daughter of the deceased and the accused. The Hon'ble Supreme Court not only placed reliance upon her testimony but also relied upon the principle relating to placing reliance upon the testimony of a child witness, as laid down in the case of **State of M.P. versus Ramesh, reported in (2011) 4 SCC 786**.
11. We have considered and taken note of all the circumstances as referred to by the learned Senior Advocate during the course of arguments, but we are not convinced with his

arguments for the purpose of bail. The age of the victim is four years and it is not expected that she would tell a lie to the Court about the particular fact of aggravated sexual assault. Therefore, the appellant is not entitled for bail on merits.

12. Now comes the period of sentence already undergone and the fixed term sentence. We have considered the grounds as raised by the learned Senior Advocate. In the case of **Nanhe Lal (supra)**, the Hon'ble Supreme Court has observed as under:

We may also note here that the High Court has not correctly read the order of this Court in the case of Atul alias Ashutosh v. State of Madhya Pradesh. In the facts of the case, the accused had undergone half of the sentence. However, this Court has not laid down that the case for bail can be considered only after undergoing half of the sentence. What is material is paragraph 4 of the said order which reads thus:

"4. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted, we find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court."

13. In the case of **Dinesh versus State of Haryana (supra)**, the accused had completed nearly seven years, eleven months and six days of incarceration with remission, and the appeal was not likely to be heard in the near future. Hon'ble Supreme Court granted bail in a matter relating to the POCSO Act.
14. In the case of **NCB versus Lakhwinder Singh (supra)**, after considering Article 21 of the Constitution of India, the Hon'ble Supreme Court maintained the order passed by the High Court.
15. Having considered the entirety of the facts and circumstances, in particular the age of the victim, I am of the considered view that this is not a fit case to enlarge the appellant on bail, either on merits or on the ground of the period of custody.
16. Accordingly, the SOS application preferred by the appellant **Rahul son of Mahaveer**, is hereby dismissed.
17. Miscellaneous application stands disposed of.

(ASHOK KUMAR JAIN),J